Supreme Court, U.S.
FILED
OCT 5 - 2010
OFFICE OF THE CLERK

No. 10-380

IN THE
SUPREME COURT OF THE UNITED STATES

TERRA XXI LTD., *et al.*,
Petitioners,

v.

AG ACCEPTANCE CORPORATION, *et al.*
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

STEVEN E. CLARK
Counsel of Record

KENNEDY CLARK & WILLIAMS P.C.
1700 Pacific Avenue, Suite 1280
Dallas, Texas 75201
Tel.: 214-979-1122
Fax: 214-979-1123
Email: sclark@kcwfirm.com

Counsel for Petitioners

SUPPLEMENTAL BRIEF OF PETITIONERS

Pursuant to Rule 15.8 of this Court, Petitioners file this supplemental brief to the PETITION in order to bring a new intervening matter to this Court's attention. Since the PETITION was filed, this Court granted certiorari in *Stern v. Marshall*, No. 10-179 on September 28, 2010 that involves similar underlying factual and related legal issues as Petitioners' PETITION. For the reasons stated below, the Court should grant Petitioners' PETITION and consider Petitioners' case in conjunction with the *Stern* case.

Although the questions presented in *Stern* differ from the question presented in Petitioners' PETITION, the underlying complaint is essentially the same in both petitions. That is, both *Stern* and Petitioners essentially argue that their respective prior bankruptcy court judgments/orders control over and preclude the subsequent Texas state court judgments.[1]

---

[1] *Stern* ultimately seeks to enforce the December 29, 2000 bankruptcy judgment for $449,754,134 (*see Marshall v. Marshall (In re Marshall)*, 253 B.R. 550 (Bankr.C.D.Cal. Oct. 6, 2000) *(Marshall I)* and *Marshall v. Marshall (In re Marshall)*, 257 B.R. 35 (Bankr.C.D.Cal. Dec. 29, 2000) *(Marshall II)* over parts of the judgment in the Texas probate proceedings involving the estate of J. Howard Marshall, II which became a final judgment on February 11, 2002 (*see Marshall II* at 8).

Petitioners seek to enforce Terra XXI Ltd.'s Chapter 11 plan of reorganization and permanent discharge injunction resulting from the bankruptcy court's confirmation order entered on January 11, 2002 over the February 8, 2006 partial summary judgment of the Texas district court (*see* App. E of the Petition).

The significant legal difference in the petitions is that unlike in *Stern*, there is no dispute in the Petitioners' case that the bankruptcy court had core jurisdiction to enter a final judgment in confirming Terra XXI Ltd.'s Chapter 11 plan of reorganization ("XXI'S PLAN"). Because the issues in *Stern* have evolved into whether or not the bankruptcy court had core jurisdiction to enter its final judgment on December 29, 2000, the Ninth Circuit did not reach the issue of whether the Texas probate court judgment was precluded in part by December 29, 2000 bankruptcy judgment pursuant to the Full Faith and Credit Act of 28 U.S.C § 1738. Instead, the Ninth Circuit applied the Full Faith and Credit Act to uphold the Texas probate judgment. *In re Marshall*, 600 F.3d 1037, 1061 (9th Cir. 2010).

If this Court rules in favor of *Stern* by holding that the December 29, 2000 bankruptcy court judgment was a "final" judgment, then *Stern* would be placed in the same position as Petitioners seeking to avoid the Texas court judgment on the basis of the prior bankruptcy court judgment/order.

A favorable ruling in Stern and Petitioners' case would provide guidance and strengthen the jurisdiction of bankruptcy courts over st ate courts that disregard or avoid prior judgments of bankruptcy courts as in *Stern*, or in part as in Petitioners' case. A favorable ruling in Stern and Petitioners' case would also serve to provide guidance to other federal courts, including bankruptcy courts, when they are asked to avoid a state court judgment that infringes upon a bankruptcy court's prior judgment, injunction, or exclusive core jurisdiction

particularly as to federal courts which continue to abstain under the *Rooker – Feldman* doctrine.

On the other hand, if this Court rules in favor of *Marshall* by holding that the *Stern* claim was not a core proceeding and as such the bankruptcy judgment was not a "final" judgment, then Petitioners' case would provide an illustrative contrast and guidance concerning the exclusive jurisdiction of bankruptcy courts, the application of the Full Faith and Credit Act in core and non-core bankruptcy proceedings, and the scope of the bankruptcy exception to the *Rooker – Feldman* doctrine.

If this Court holds in *Stern* that the December 29, 2000 bankruptcy judgment is a "final" judgment, there is little doubt that the Texas probate judgment conflicted with the bankruptcy judgment. The Ninth Circuit stated in *In re Marshall, Id*:

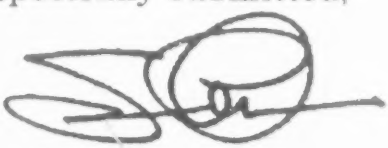
> Having already noted in our previous opinion that "[o]ur review of the trial records in the Texas probate court and in the United States district court discloses conflicting findings of fact critical to the merits of the cases of the contesting parties," *In re Marshall,* 392 F.3d at 1123, ...

As both *Stern's* and Petitioners' case illustrate, any disregard or modification of a prior bankruptcy court judgment can have far reaching and profound effects.

Petitioners pray that this Court grants Petitioners' PETITION and vacates the state court judgments. Alternately, Petitioners pray that

disposition of Petitioners' PETITION await this Court's disposition of the *Stern* case on certiorari.

Respectfully submitted,



STEVEN E. CLARK
Counsel of Record

KENNEDY CLARK & WILLIAMS P.C.
1700 Pacific Avenue, Suite 1280
Dallas, Texas 75201
Tel.: 214-979-1122
Fax: 214-979-1123
Email: sclark@kcwfirm.com

Counsel for Petitioners